

ASSEMBLY BILL

No. 2687

Introduced by Assembly Member Bradford

February 19, 2010

An act to amend Section 23036 of, and to add and repeal Sections 23670 and 23671 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2687, as introduced, Bradford. Corporation taxes: credit: trade infrastructure investment: import-export cargo.

The Corporation Tax Law authorizes various credits against the taxes imposed by that law.

This bill would, subject to a subsequent act determining total cost, authorize credits against those taxes for each taxable year beginning on or after January 1, 2011, and before January 1, 2021, in an amount not to exceed 5% of the amount paid or incurred during the taxable year for capital costs of a project relating to port or harbor activity, as provided, and in an amount not to exceed the product of \$5 and the number of tons of additional qualified cargo, as provided. This bill would require the Legislative Analyst to evaluate the effectiveness of this tax credit, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) The primary purpose of this act is to encourage private
2 investment in, and the use of, public port facilities in California.

3 (b) Because there are limited public funding sources for port
4 and cargo infrastructure facilities, and the need to invest in our
5 ports and port facilities has not abated during the economic
6 downturn, additional private investment and public-private
7 partnerships should be encouraged as a means to assist in the
8 financing improvements to California's public ports and port
9 infrastructure facilities.

10 (c) The development, improvement, expansion, and maintenance
11 of the state's public ports and port infrastructure facilities, and the
12 utilization of public port facilities for the import and export of
13 cargo to or from distribution, manufacturing, fabrication, assembly,
14 processing, or warehousing sites in California, are essential to
15 California's economic health and the ability of business and
16 industry associated with the maritime industry to compete
17 cost-effectively on a regional, national, and global scale.

18 SEC. 2. Section 23036 of the Revenue and Taxation Code is
19 amended to read:

20 23036. (a) (1) The term "tax" includes any of the following:

21 (A) The tax imposed under Chapter 2 (commencing with Section
22 23101).

23 (B) The tax imposed under Chapter 3 (commencing with Section
24 23501).

25 (C) The tax on unrelated business taxable income, imposed
26 under Section 23731.

27 (D) The tax on S corporations imposed under Section 23802.

28 (2) The term "tax" does not include any amount imposed under
29 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
30 of subdivision (f) of Section 24667.

31 (b) For purposes of Article 5 (commencing with Section 18661)
32 of Chapter 2, Article 3 (commencing with Section 19031) of
33 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
34 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
35 and for purposes of Sections 18601, 19001, and 19005, the term
36 "tax" also includes all of the following:

37 (1) The tax on limited partnerships, imposed under Section
38 17935, the tax on limited liability companies, imposed under
39 Section 17941, and the tax on registered limited liability

1 partnerships and foreign limited liability partnerships imposed
2 under Section 17948.

3 (2) The alternative minimum tax imposed under Chapter 2.5
4 (commencing with Section 23400).

5 (3) The tax on built-in gains of S corporations, imposed under
6 Section 23809.

7 (4) The tax on excess passive investment income of S
8 corporations, imposed under Section 23811.

9 (c) Notwithstanding any other provision of this part, credits are
10 allowed against the “tax” in the following order:

11 (1) Credits that do not contain carryover provisions.

12 (2) Credits that, when the credit exceeds the “tax,” allow the
13 excess to be carried over to offset the “tax” in succeeding taxable
14 years, except for those credits that are allowed to reduce the “tax”
15 below the tentative minimum tax, as defined by Section 23455.
16 The order of credits within this paragraph shall be determined by
17 the Franchise Tax Board.

18 (3) The minimum tax credit allowed by Section 23453.

19 (4) Credits that are allowed to reduce the “tax” below the
20 tentative minimum tax, as defined by Section 23455.

21 (5) Credits for taxes withheld under Section 18662.

22 (d) Notwithstanding any other provision of this part, each of
23 the following applies:

24 (1) No credit may reduce the “tax” below the tentative minimum
25 tax (as defined by paragraph (1) of subdivision (a) of Section
26 23455), except the following credits:

27 (A) The credit allowed by former Section 23601 (relating to
28 solar energy).

29 (B) The credit allowed by former Section 23601.4 (relating to
30 solar energy).

31 (C) The credit allowed by former Section 23601.5 (relating to
32 solar energy).

33 (D) The credit allowed by Section 23609 (relating to research
34 expenditures).

35 (E) The credit allowed by former Section 23609.5 (relating to
36 clinical testing expenses).

37 (F) The credit allowed by Section 23610.5 (relating to
38 low-income housing).

39 (G) The credit allowed by former Section 23612 (relating to
40 sales and use tax credit).

1 (H) The credit allowed by Section 23612.2 (relating to enterprise
2 zone sales or use tax credit).

3 (I) The credit allowed by former Section 23612.6 (relating to
4 Los Angeles Revitalization Zone sales tax credit).

5 (J) The credit allowed by former Section 23622 (relating to
6 enterprise zone hiring credit).

7 (K) The credit allowed by Section 23622.7 (relating to enterprise
8 zone hiring credit).

9 (L) The credit allowed by former Section 23623 (relating to
10 program area hiring credit).

11 (M) The credit allowed by former Section 23623.5 (relating to
12 Los Angeles Revitalization Zone hiring credit).

13 (N) The credit allowed by former Section 23625 (relating to
14 Los Angeles Revitalization Zone hiring credit).

15 (O) The credit allowed by Section 23633 (relating to targeted
16 tax area sales or use tax credit).

17 (P) The credit allowed by Section 23634 (relating to targeted
18 tax area hiring credit).

19 (Q) The credit allowed by *former* Section 23649 (relating to
20 qualified property).

21 (R) *The credit allowed by Section 23670 (relating to trade*
22 *infrastructure investments).*

23 (S) *The credit allowed by Section 23671 (relating to*
24 *import-export cargo).*

25 (2) No credit against the tax may reduce the minimum franchise
26 tax imposed under Chapter 2 (commencing with Section 23101).

27 (e) Any credit which is partially or totally denied under
28 subdivision (d) is allowed to be carried over to reduce the “tax”
29 in the following year, and succeeding years if necessary, if the
30 provisions relating to that credit include a provision to allow a
31 carryover of the unused portion of that credit.

32 (f) Unless otherwise provided, any remaining carryover from a
33 credit that has been repealed or made inoperative is allowed to be
34 carried over under the provisions of that section as it read
35 immediately prior to being repealed or becoming inoperative.

36 (g) Unless otherwise provided, if two or more taxpayers share
37 in costs that would be eligible for a tax credit allowed under this
38 part, each taxpayer is eligible to receive the tax credit in proportion
39 to his or her respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part is computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity is limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit is allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-through entity" means any partnership or S corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled

1 to a credit pursuant to this part for the taxable year that begins
2 during the last year a credit is operative.

3 (3) This subdivision applies to credits that become inoperative
4 on or after the operative date of the act adding this subdivision.

5 SEC. 3. Section 23670 is added to the Revenue and Taxation
6 Code, to read:

7 23670. (a) Subject to the total cost of the credit described in
8 this section being determined by the Legislature, as described in
9 subdivision (h), for each taxable year beginning on or after January
10 1, 2011, and before January 1, 2021, there shall be allowed as a
11 trade infrastructure investment tax credit against the “tax,” as
12 defined by Section 23036, an amount equal to no more than 5
13 percent of the total capital costs of each qualifying project
14 constructed in this state, subject to the terms, conditions, and
15 qualifications established by this section.

16 (b) For purposes of this section:

17 (1) “Breakbulk cargo” means any commodities, machinery,
18 equipment, materials, products, or other cargo transported as
19 palletized or unpalletized bagged, packaged, wrapped, drummed,
20 baled, or crated goods, which are shipped via oceangoing vessel.
21 For purposes of this section, automobiles, trucks, and lumber shall
22 be considered breakbulk cargo. Breakbulk cargo shall not include
23 any liquid or dry commodities that are handled in bulk or any
24 containerized cargo.

25 (2) “Capital costs” means all costs and expenses incurred by
26 one or more investing taxpayers in connection with the acquisition,
27 construction, installation, and equipping of a qualifying project,
28 including any environmental mitigation undertaken specifically
29 to reduce the impacts of a qualifying project, during the period
30 commencing with the date on which the acquisition, construction,
31 installation, and equipping commences and ending on the date on
32 which the qualifying project is placed in service.

33 (A) Capital costs shall include, but not be limited to, the
34 following:

35 (i) The costs of acquiring, constructing, installing, equipping,
36 and financing a qualifying project, including all obligations
37 incurred for labor and to contractors, subcontractors, builders, and
38 materialmen.

39 (ii) The costs of acquiring land or rights in land and any cost
40 incidental thereto, including recording fees.

1 (iii) The costs of contract bonds and of insurance of any kind
2 that may be required or necessary during the acquisition,
3 construction, or installation of a qualifying project.

4 (iv) The costs of architectural and engineering services,
5 including test borings, surveys, estimates, plans, specifications,
6 preliminary investigations, environmental mitigation, and
7 supervision of construction, as well as for the performance of all
8 the duties required by or consequent upon the acquisition,
9 construction, and installation of a qualifying project.

10 (v) The costs associated with installation of fixtures and
11 equipment, surveys, including archaeological and environmental
12 surveys, site tests and inspections, subsurface site work, excavation,
13 removal of structures, roadways, and other surface obstructions,
14 filling, grading, paving, and provisions for drainage, storm water
15 retention, installation of utilities, including water, sewerage
16 treatment, gas, electricity, communications, and similar facilities,
17 and off-site construction of utility extensions to the boundaries of
18 the property.

19 (vi) The costs of completing any environmental mitigation
20 related to the qualifying project.

21 (vii) All other costs of a nature comparable to those described,
22 including, but not limited to, all project costs required to be
23 capitalized for federal income tax purposes pursuant to the
24 provisions of Section 263(a) of Title 26 of the United States Code.

25 (viii) Costs otherwise defined as capital costs incurred by the
26 investing taxpayer where the investing taxpayer is the lessee under
27 a lease that contains a term of not less than five years and is
28 characterized as a capital lease for federal income tax purposes.

29 (B) Capital costs shall not include property owned or leased by
30 the investing taxpayer or a related entity before the commencement
31 of the acquisition, construction, installation, or equipping of the
32 qualified project, unless the property was physically located outside
33 the state for a period of at least one year prior to the date on which
34 the qualifying project was placed in service.

35 (3) "Containerized cargo" shall mean any machinery, equipment,
36 materials, products, commodities, or any other cargo transported
37 by containers, which are rigid, sealable, reusable metal boxes built
38 to a recognized international standard, in which goods are shipped
39 via oceangoing vessel.

1 (4) “Export” means any breakbulk or containerized cargo which
2 is shipped in interstate or foreign commerce from the State of
3 California to a foreign country or a domestic noncontiguous state
4 or territory via oceangoing vessel.

5 (5) “Import” means any breakbulk or containerized cargo which
6 is shipped in interstate or foreign commerce to the State of
7 California from a foreign country or from a domestic
8 noncontiguous state or territory via oceangoing vessel.

9 (6) “Investing taxpayer” means a taxpayer corporation,
10 partnership, limited liability company, proprietorship, trust, or
11 other business entity, regardless of form, making a qualified
12 investment.

13 (7) “Oceangoing vessel” means a vessel, ship, or barge engaged,
14 for compensation, in transporting breakbulk or containerized cargo
15 in interstate or foreign commerce.

16 (8) “Port or port and harbor activity” means any trade or
17 business conducted on premises in which a public port or harbor
18 district has an ownership, leasehold, or other possessory interest
19 and those premises are used as part of the regular cargo-related
20 operations of a public port or proposed to be used as part of
21 pending construction of a qualifying project.

22 (9) “Project” means any land, building, or other improvement,
23 and all real and personal properties deemed necessary or useful in
24 connection therewith, whether or not previously in existence,
25 located or to be located on public port property or within the
26 planning jurisdiction of a public port in this state.

27 (10) “Public port” means any port or harbor operating under
28 grant from the state, subject to the restrictions of the tidelands
29 trust, or any other public port or harbor district established by a
30 political subdivision of the state for the purposes of conducting
31 interstate or foreign trade.

32 (11) “Qualifying investment” means the undertaking by one or
33 more investing taxpayers of a qualifying project.

34 (12) “Qualifying project” means a project to be undertaken by
35 one or more investing taxpayers that has a capital cost of not less
36 than five million dollars (\$5,000,000) and at which the predominant
37 trade or business activity conducted will constitute industrial,
38 warehousing, or port and harbor operations and cargo handling,
39 including any port or port and harbor activity, and which is certified
40 by the Franchise Tax Board pursuant to the terms of this section.

1 (c) The tax credit shall be earned at the time the total capital
2 costs are identified by an investing taxpayer in a qualified project.
3 However, tax credits shall not be earned for capital costs expended
4 prior to January 1, 2011, and shall not be applied against a tax
5 liability until the project receives certification from the Franchise
6 Tax Board.

7 (d) A project shall not be certified as a qualifying project unless
8 the Franchise Tax Board determines that there will be sufficient
9 revenue received by the state as a result of the economic impacts
10 from the completion of the project from increased port or port and
11 harbor activity, whether because of the grant of the tax credit or
12 otherwise, to offset the cost to the state of providing the tax credit.

13 (e) The Franchise Tax Board shall develop a dynamic revenue
14 anticipation model designed to estimate the following economic
15 impacts from the completion of a qualifying project:

16 (1) The total state tax revenues generated by the project and
17 project-related economic activity.

18 (2) The total local tax and user fee revenues generated by the
19 project and project-related economic activity.

20 (3) The total jobs created by the project and project-related
21 economic activity, including the impact of the project on the
22 employment of California residents.

23 (4) The impact of the qualifying project on the overall economy
24 of the state.

25 (f) (1) An investing taxpayer seeking certification of a
26 qualifying project shall submit an application to the Franchise Tax
27 Board that includes the following information:

28 (A) A detailed description of the qualifying project, including
29 a summary of total actual capital costs prepared by an independent
30 certified public accountant.

31 (B) A revenue analysis prepared pursuant to the Franchise Tax
32 Board's model developed pursuant to subdivision (e).

33 (C) A statement that the proposed project meets the requirements
34 of this section, as well as any subsequent requirements adopted
35 by the Franchise Tax Board to facilitate the administration of this
36 section, to be classified as a qualifying project, accompanied by
37 any relevant evidence or supporting documents necessary to the
38 statement.

1 (D) The name of each investing taxpayer or the name or names
2 of its shareholders, partners, members, owners, or beneficiaries
3 that will become entitled to the tax credit.

4 (E) Any other information required by the Franchise Tax Board.

5 (2) If the application is incomplete, additional information may
6 be requested prior to further action by the Franchise Tax Board.

7 (3) The Franchise Tax Board may develop a standard form,
8 instructions, or form and instructions to facilitate the submission
9 of applications pursuant to this paragraph.

10 (4) The applicant shall remit a fee paid to the Franchise Tax
11 Board that shall cover the costs of the Franchise Tax Board's
12 review and evaluation of the project application.

13 (g) (1) The Franchise Tax Board shall certify a qualifying
14 project upon making a finding that the terms of this section have
15 been met.

16 (2) The Franchise Tax Board shall submit notice of its
17 certification of a project as a qualifying project to the Department
18 of Finance, the Joint Legislative Budget Committee, and the
19 Legislative Analyst.

20 (3) The certification shall include a unique identifying number
21 for each qualifying project, the total amount of tax credits eligible
22 to be applied to the qualifying project, and the amount equal to 5
23 percent of each taxable year.

24 (h) (1) A tax credit for a certified qualifying project for any
25 taxable year shall not be allowed under this section an investing
26 taxpayer until the project receives notification from the Franchise
27 Tax Board of the amount available to be applied, which shall not
28 exceed 5 percent of total project capital costs, for the current
29 taxable year.

30 (2) The amount available to be applied to a project shall be equal
31 to the project's share of the total cost of this credit as will be
32 determined by the Legislature, based on each project's percentage
33 of the total amount of project capital costs certified by the
34 Franchise Tax Board as of July 1 of each taxable year.

35 (3) The Franchise Tax Board shall make all notifications
36 pursuant to this paragraph within 90 days of an appropriation by
37 the Legislature for the purposes of funding the tax credit, or, if no
38 appropriation is made, within 90 days of the adoption of a state
39 budget.

1 (i) The aggregate of all credits determined under subdivision
2 (a) for a qualifying project shall not exceed the total capital costs
3 of the project.

4 (j) In the case where the credit allowed by this section exceeds
5 the “tax,” the excess may be carried over to reduce the “tax” in
6 the following year, and the 10 succeeding years if necessary, until
7 the credit is exhausted.

8 (k) If an investing taxpayer that claims a credit under this section
9 sells, transfers, or otherwise disposes of, either directly or
10 indirectly, a qualifying project within 10 years of the taxable year
11 during which it first claimed the credit, there shall be added to the
12 “tax” of the investing taxpayer during the taxable year of sale,
13 transfer, or disposition an amount equal to the total credit claimed
14 multiplied by a fraction, the numerator of which is the remaining
15 term of 10 years and the denominator of which is 10, unless an
16 equivalent balance of the credit is expressly assigned to the new
17 owner of the qualified project in question and the assignment is
18 approved by the Franchise Tax Board.

19 (l) The Franchise Tax Board may audit any certified qualifying
20 project or inspect the physical site of the qualifying project in order
21 to verify claims and costs presented to the Franchise Tax Board
22 by an investing taxpayer in an application.

23 (m) (1) If the Franchise Tax Board finds that funds for which
24 an investing company received credits according to the provisions
25 of this section are not invested in and expended with respect to
26 capital costs of a qualifying investment, the investing company’s
27 tax for that taxable year shall be increased by an amount necessary
28 for the recapture of credit provided by this section.

29 (2) Interest that may be assessed and collected on recovered
30 credits computed from the original due date of the return on which
31 the credit was taken.

32 (3) The provisions of this section shall be in addition to and
33 shall not limit the authority of the Franchise Tax Board to assess
34 or to collect under any other provision of law.

35 (n) By January 1, 2020, the Legislative Analyst shall prepare
36 an evaluation of the effectiveness of the infrastructure investment
37 tax credit, which shall include the overall impact of the tax credits,
38 the amount of the tax credits issued, the number of new jobs
39 created, the amount of California payroll created, the economic
40 impact of the tax credits on the port and maritime industry located

1 in this state and regionally, the amount of new infrastructure that
2 has been developed in the state, and any other factors that describe
3 the impact of the program.

4 (o) This section shall remain in effect only until December 1,
5 2021, and as of that date is repealed, and an investor tax credit
6 pursuant to the provisions of this section shall not be granted after
7 that date.

8 SEC. 4. Section 23671 is added to the Revenue and Taxation
9 Code, to read:

10 23671. (a) Subject to the total cost of the credit described in
11 this section being determined by the Legislature, as provided in
12 subdivision (f), for each taxable year beginning on or after January
13 1, 2011, and before January 1, 2021, there shall be allowed as an
14 import-export cargo tax credit against the “tax,” as defined by
15 Section 23036, of an amount equal to no more than the product of
16 five dollars (\$5) and the taxpayer’s number of tons of additional
17 qualified cargo for the taxable year, subject to the terms, conditions,
18 and qualifications of this section.

19 (b) For purposes of this section, subdivision (b) of Section 23670
20 and the following shall apply:

21 (1) “Additional cargo” means the amount of qualified cargo
22 moved in the current taxable year over and above the cargo moved
23 in the previous taxable year.

24 (2) “Qualified business entity” means a taxpayer corporation,
25 partnership, limited liability company, or other commercial entity,
26 all or a portion of whose activities involve the import or export of
27 breakbulk or containerized cargo to or from cargo facilities located
28 within California.

29 (3) “Qualified cargo” means any breakbulk or containerized
30 cargo which is imported or exported to or from a manufacturing,
31 fabrication, assembly, distribution, processing, or warehouse
32 facility located in California and which is moved by way of an
33 oceangoing vessel berthed at a public port facility in California
34 during the taxable year and certified by the Franchise Tax Board
35 as meeting the terms of this section.

36 (4) “Ton” means a net ton of 2,000 pounds and in the case of
37 containerized cargo it shall exclude the weight of the container.

38 (c) A project shall not be certified as a qualifying project unless
39 the Franchise Tax Board determines that there will be sufficient
40 revenue received by the state as a result of the economic impacts

1 from the additional qualified cargo import or export activity,
2 whether because of the grant of the tax credit or otherwise, to offset
3 the cost to the state of providing the tax credit.

4 (d) The Franchise Tax Board shall develop a dynamic revenue
5 anticipation model designed to estimate the following economic
6 impacts from the additional qualifying cargo identified:

7 (1) The total state tax revenues generated by the additional cargo
8 and cargo-related economic activity.

9 (2) The total local tax and user fee revenues generated by the
10 cargo and cargo-related economic activity.

11 (3) The total jobs created by the cargo and cargo-related
12 economic activity, including the impact of the cargo on the
13 employment of California residents.

14 (4) The impact of the qualified cargo on the overall economy
15 of the state.

16 (e) (1) A qualified business entity seeking certification of a
17 qualified cargo shall submit an application to the Franchise Tax
18 Board that includes the following information:

19 (A) A verified statement of additional cargo volume data for
20 the taxable year for which the credit is being sought and the cargo
21 volumes for the taxable year prior to the taxable year of the
22 application, specifically including the total annual volume and
23 tons of breakbulk or containerized cargo imported and exported
24 from or to, manufacturing, fabrication, assembly, distribution,
25 processing, or warehousing facilities located in California.

26 (B) A revenue analysis prepared pursuant to the Franchise Tax
27 Board's model developed pursuant to subdivision (d).

28 (C) A statement that the proposed project meets the requirements
29 of this section, as well as any subsequent requirements adopted
30 by the Franchise Tax Board to facilitate the administration of this
31 section, to be classified as a qualifying project, accompanied by
32 any relevant evidence or supporting documents necessary to the
33 statement.

34 (D) Any other information required by the Franchise Tax Board.

35 (2) If the application is incomplete, additional information may
36 be requested prior to further action by the Franchise Tax Board.

37 (3) The Franchise Tax Board may develop a standard form,
38 instructions, or form and instructions to facilitate the submission
39 of applications pursuant to this paragraph.

1 (4) The applicant shall remit a fee paid to the Franchise Tax
2 Board, which shall cover the costs of the Franchise Tax Board's
3 review and evaluation of the project application.

4 (f) The Franchise Tax Board shall certify additional cargo as
5 qualifying cargo upon making a finding that the terms of this
6 section have been met, subject to all of the following:

7 (1) A tax credit shall not be allowed under this section in a
8 taxable year for which no amount is determined for the purpose
9 of funding the costs of the credit.

10 (2) The amount available to be applied to any additional
11 qualified cargo shall never exceed five dollars (\$5) per ton of cargo,
12 but may be less than five dollars (\$5) per ton if equal to the
13 qualifying business entity's share of the total cost of this credit as
14 will be determined by the Legislature, based on each qualifying
15 business entity's percentage of the total amount of additional
16 qualified cargo certified by the Franchise Tax Board as of July 1
17 of each taxable year.

18 (3) The Franchise Tax Board shall notify a qualifying business
19 entity with additional qualified cargo applications submitted prior
20 to July 1 of each taxable year within 90 days of an appropriation
21 by the Legislature for the purposes of funding the tax credit, or, if
22 no appropriation is made, within 90 days of the adoption of a state
23 budget.

24 (g) In the case where the credit allowed by this section exceeds
25 the "tax," the excess may be carried over to reduce the "tax" in
26 the following year, and the 10 succeeding years if necessary, until
27 the credit is exhausted.

28 (h) The Franchise Tax Board may promulgate rules and
29 regulations as necessary to implement the provisions of this section.

30 (i) The Franchise Tax Board may audit any qualified business
31 entity in order to verify claims presented to the Franchise Tax
32 Board in an application submitted pursuant to this section.

33 (j) (1) If the Franchise Tax Board finds that any claims
34 regarding additional cargo for which a qualified business entity
35 received credits according to the provisions of this section were
36 inaccurate, the qualified business entity's tax for that taxable period
37 shall be increased by an amount necessary for the recapture of
38 credit provided by this section.

1 (2) Interest that may be assessed and collected on recovered
2 credits computed from the original due date of the return on which
3 the credit was taken.

4 (3) The provisions of this section shall be in addition to and
5 shall not limit the authority of the Franchise Tax Board to assess
6 or to collect under any other provision of law.

7 (k) By January 1, 2020, the Legislative Analyst shall prepare
8 an evaluation of the effectiveness of the import-export tax credit
9 which shall include the overall impact of the tax credits, the amount
10 of the tax credits issued, the number of new jobs created, the
11 amount of California payroll created, the economic impact of the
12 tax credits on the port and maritime industry located in this state
13 and regionally, the amount of new infrastructure that has been
14 developed in the state, and any other factors that describe the
15 impact of the program.

16 (l) This section shall remain in effect only until December 1,
17 2021, and as of that date is repealed, and no investor tax credit
18 pursuant to the provisions of this section shall be granted after that
19 date.